

KM&M
KAUFF MCGUIRE MARCOLIS LLP
950 THIRD AVENUE • FOURTEENTH FLOOR
NEW YORK, NY 10022

TELEPHONE (212) 644-1010
FACSIMILE (212) 644-1936

NEW YORK
LOS ANGELES
WWW.KMM.COM

FAX COVER SHEET

This facsimile contains PRIVILEGED AND CONFIDENTIAL INFORMATION intended only for the use of the addressee(s) named below. If you are not the intended recipient of this facsimile, or the agent responsible for delivering it to the intended recipient, you are hereby notified that any dissemination or copying of this facsimile is strictly prohibited. If you have received this facsimile in error, please immediately notify us by telephone and return the original facsimile to us at the above address via the U.S. Postal Service. Thank you.

DATE: August 13, 2015

FILE NUMBER: 10464.0067

To:

NAME:	FAX No.:	PHONE No.:
Gary W. Shinnars, Executive Secretary National Labor Relations Board	(202) 273-4270	

CC:

NAME:	FAX No.:	PHONE No.:
RyAnn McKay Hooper, Esq. Counsel for the General Counsel	(718) 330-7579	
Gabrielle Semel, Esq. Communications Workers of America, AFL-CIO	(212) 419-1555	
Shelley B. Kroll, Esq. Segal Roitman, LLP	(617) 742-2187	

FROM: Harlan J. Silverstein

PHONE: (212) 909-0702

RE:

NUMBER OF PAGES WITH COVER PAGE:	3
----------------------------------	---

Message:

Please see attached.

PLEASE CALL NELLEKE MORSE AT (212) 644-1010 IF FAX TRANSMISSION IS NOT
SATISFACTORY

KM&M
KAUFF MCGUIRE MARGOLIS LLP

950 THIRD AVENUE • FOURTEENTH FLOOR
NEW YORK, NY 10022

HARLAN J. SILVERSTEIN
DIRECT DIAL: (212) 909-0702
DIRECT FAX: (212) 909-3502
SILVERSTEIN@KMM.COM

TELEPHONE (212) 644-1010
FAX (212) 644-1936

NEW YORK
LOS ANGELES
WWW.KMM.COM

August 13, 2015

VIA FACSIMILE (202) 273-4270

Gary Shinnars
Executive Secretary
National Labor Relations Board
1015 Half Street, S.E.
Washington, D.C. 20570-00001

Re: *In re CSC Holdings, LLC et al.*, Nos. 02-CA-085811 et al.

Dear Mr. Shinnars:

CSC Holdings, LLC and Cablevision Systems New York City Corp. (collectively, “Cablevision”), the respondent in the above-captioned case pending before the Board, respectfully submits this notice of a “pertinent and significant authorit[y]” that has “come to [Cablevision’s] attention after [its] brief [was] filed.” *In re Reliant Energy*, 339 NLRB No. 13 (2003). In *SW General, Inc. v. NLRB*, __ F.3d __, 2015 WL 4666487 (D.C. Cir. Aug. 7, 2015), attached hereto, the U.S. Court of Appeals for the D.C. Circuit held that “the former Acting General Counsel of the NLRB, Lafe Solomon, served in violation of” the Federal Vacancies Reform Act (“FVRA”), 5 U.S.C. § 3345(b)(1), “from January 5, 2011 to November 4, 2013.” *Id.* at *13. Because the unfair-labor-practice complaint in that case was issued under the acting General Counsel’s putative authority during that period, the D.C. Circuit held the complaint unlawful and vacated the Board’s decision. *See id.* at *3-13.

SW General forcefully confirms that, as Cablevision has argued (Cablevision Exc. Br. 117-18), the above referenced unfair-labor-practice complaints also are unlawful, the Board cannot adjudicate them and should immediately dismiss them. Like the complaint in *SW General*, the complaints here were purportedly issued under the acting General Counsel’s authority at a time (April and May 2013) when Mr. Solomon was not lawfully serving in that office. Thus, as in *SW General*, the complaints in this case are invalid, and “without a valid complaint, the Board c[annot] find [Cablevision] liable for a ULP.” 2015 WL 4666487, at *8. Indeed, *SW General* expressly rejected the only argument the General Counsel has made in our



Gary Shinnars
August 13, 2015
Page 2

case why Mr. Solomon's service after January 2011 did not violate the FVRA: that Section 3345(b)(1), the provision the D.C. Circuit held was violated, does not apply to Mr. Solomon's designation as acting General Counsel under Section 3345(a)(3). *Id.* at *5-8; *cf.* GC Exc. Br. 87-89. The D.C. Circuit made clear, moreover, that neither the harmless-error nor *de facto*-officer doctrines can save the complaints—and any Board decision—from invalidity. *See* 2015 WL 4666487, at *8-13.

Respectfully submitted,

/s/ Harlan J. Silverstein
Harlan J. Silverstein
Kauff McGuire & Margolis LLP
950 Third Ave., 14th Floor
New York, NY 10022
(212) 909-0702

Counsel for Respondent

Attachment

cc: RyAnn McKay Hooper, Esq., Counsel for the General Counsel
Gabrielle Semel, Esq., Counsel for Charging Party
Shelley B. Kroll, Esq., Counsel for Charging Party